

ESTTA Tracking number: **ESTTA115257**

Filing date: **12/18/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

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|---------------------------------------|--|
| Name | Frito-Lay North America, Inc. |
| Granted to Date of previous extension | 12/17/2006 |
| Address | 7701 Legacy Drive Plano, TX 75024 UNITED STATES |
| Attorney information | Joseph J. Ferretti Frito-Lay North America, Inc. 7701 Legacy DriveMail Stop 3A-421 Plano, TX 75024 UNITED STATES TRADEMARKS@fritolay.com Phone:972-334-3403 |

Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 78579423 | Publication date | 06/20/2006 |
| Opposition Filing Date | 12/18/2006 | Opposition Period Ends | 12/17/2006 |
| Applicant | Roskam Baking Company Post Office Box 202 4880 Corporate Exchange Boulevard Grand Rapids, MI 495010202 UNITED STATES | | |

Goods/Services Affected by Opposition

Class 030. First Use: 2004/12/31 First Use In Commerce: 2004/12/31
All goods and services in the class are opposed, namely: SNACK FOODS, NAMELY, SNACK CHIPS AND SNACK MIXES PRINCIPALLY CONTAINING THE SAME

| | |
|-------------|---|
| Attachments | Notice of Opposition.pdf (4 pages)(621842 bytes) |
| Signature | /Joseph J. Ferretti/ |
| Name | Joseph J. Ferretti |
| Date | 12/18/2006 |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/579,423, HEARTLETS
Published in the *Official Gazette* on June 20, 2006

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| FRITO-LAY NORTH AMERICA, INC. | : |
| | : |
| Opposer, | : |
| | : |
| vs. | : |
| | : |
| ROSKAM BAKING COMPANY, | : |
| | : |
| Applicant. | : |
| -----X | |

NOTICE OF OPPOSITION

Opposer, Frito-Lay North America, Inc., a Delaware corporation, having a place of business at 7701 Legacy Drive, Plano, TX 75024, believes it will be damaged by the issuance of a registration to Applicant, Roskam Baking Company (hereinafter "Applicant"), a Michigan corporation, with an address of 4880 Corporate Exchange Boulevard, Grand Rapids, Michigan 49501, upon its Application Serial No. 78/579,423 for the mark HEARTLETS in International Class 30 for "snack foods, namely, snack chips and snack mixes principally containing the same" and having previously been granted extensions of time to oppose, hereby opposes same.

The grounds for opposition are as follows:

1. Opposer, Frito-Lay North America, Inc. through its predecessors in interest and title, and through its related companies, divisions and/or licensees (hereinafter individually and/or collectively referred to as "Opposer"), has been engaged in the manufacture and sale of snack foods for over fifty years and is now one of the largest manufacturers of snack foods in the United States.

2. Opposer's snack foods are marketed and sold in tremendous quantities on a nationwide basis, supported by tens of millions of dollars of advertising and promotion each year. Opposer's food products are sold in almost every supermarket in the United States as well as in numerous convenience stores, vending machines, mass merchandise stores, schools and other outlets.

3. Opposer has used the mark HEARTZELS on and in connection with snack foods and related products, including, but not limited to, pretzels since February 2004. Since a date long prior to the filing date of the above identified application and continuing through the present, HEARTZELS has been identified with Opposer and has appeared on product packaging and advertising.

4. Opposer's sales of HEARTZELS products have exceeded millions of dollars. By virtue of its sales success and advertising and promotional efforts, the HEARTZELS trademark has enjoyed strong brand recognition and distinctiveness which has resulted in a highly favorable reputation and goodwill among the trade and consumers as identifying high quality snack food products manufactured and exclusively sold by Opposer.

5. Opposer is also the owner of a valid and subsisting U.S. registration for the mark HEARTZELS - U.S. Registration No. 2,911,489. This registration is valid and in force and is inherently distinctive.

6. As a result of the extensive and continuous advertising, sale, use and promotion of products bearing Opposer's HEARTZELS mark for over two years and its high quality, said mark has acquired substantial public and consumer recognition throughout the United States, enjoys valuable goodwill and has become an asset of considerable value to Opposer.

7. On information and belief, on March 3, 2005, Applicant filed Application Serial No. 78/579,423 to register the mark HEARTLETS for "snack foods, namely, snack chips and snack mixes principally containing the same" in International Class 30.

8. Opposer has priority over Applicant because its use and/or registration dates precede the Applicant's filing date of Applicant's HEARTLETS mark.

9. Registration of Applicant's alleged mark which is the subject of the application-in-opposition is barred by the provisions of Section 2(d) of the Trademark Act of 1946 because the said mark consists of or comprises a mark which so resembles a mark previously registered in the United States Patent and Trademark Office and/or used in the United States by Opposer and not abandoned, as to be likely, when used in connection with the alleged goods of the Applicant to cause confusion, mistake or deception.

10. Applicant's alleged HEARTLETS mark and Opposer's HEARTZELS mark are similar in their overall commercial impression, sound and appearance.

11. On information and belief, the goods to which Applicant's alleged HEARTLETS trademark will be applied and the goods upon which Opposer's HEARTZELS mark is registered and/or extensively used are or are likely to be similar, competitive, related or complementary products. On information and belief, they appeal or will appeal to the same class of purchasers, and are goods of a type which are often sold through the same channels of trade.

12. Accordingly, Applicant's alleged HEARTLETS mark, so resembles Opposer's previously used and registered HEARTZELS mark, as to be likely to cause confusion, to cause mistake or to deceive. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of the applied for mark with Opposer's use and registration of its HEARTZELS mark is that (a) persons are likely to believe that Applicant's products have their source in Opposer, or (b) that Applicant and its goods are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Opposer when, in fact, they are not. Accordingly, registration of Applicant's HEARTLETS mark is barred by the provisions of Section 2(d) of the trademark Act of 1946, 15 U.S.C. § 1052(d).

13. Applicant's alleged mark which is the subject of the application-in-opposition so resembles Opposer's previously used and registered HEARTZELS mark, as to be likely to constitute a false representation that Applicant's goods are approved or sponsored by Opposer or that Applicant's mark which is the subject of the application-in-opposition is a version of Opposer's marks and/or products/services, thereby deceiving the public, causing confusion or mistake and causing damage to Opposer within the meaning of 15 U.S.C. §1063.

14. Opposer will be damaged by the registration sought by Applicant within the meaning of 15 U.S.C. §1063 because such registration would support and assist Applicant in the confusing, misleading and/or dilutive use of Applicant's alleged HEARTLETS mark, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

15. In view of the foregoing, issuance of a registration to Applicant for its claimed HEARTLETS mark which is the subject of Application Serial No. 78/579,423 would, therefore, be damaging to Opposer's common law mark and federal registration within the meaning of Section 13 of the Lanham Act, 15 U.S.C. §1063.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied to Applicant on its Application Serial No. 78/579,423.

Respectfully submitted,

FRITO-LAY NORTH AMERICA, INC.

Date: 12/18/04

By: 

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